

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT
(G.O. Rt. No. 232/AIL/Lab./J/2010, dated 21st December 2010)

NOTIFICATION

Whereas, the Award in I.D. No.1/2000, dated 22-10-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Pond's (India) Limited, Arumparthalapuram (Presently Hindustan Lever Limited, Arumparthalapuram Pond's Factory) and Tmt. M. Chitra over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour), that the said Award shall be published in the official gazette. Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. MOHANDASS, M.A., B.L., P.G.D.H.R.D.I.
II Additional District Judge,
Presiding Officer, Labour Court.

Friday, the 22nd day of October 2010.

I.D. No. 1/2000

M. Chitra	.. Petitioner
<i>Versus</i>	
The Managing Director, Pond's (India) Limited, Pondicherry.	.. Respondent

This industrial dispute coming on 18-10-2010 for final hearing before me in the presence of Thiru G. Mohan Keerthikumar, Advocate for the petitioner and Thiruvalargal L. Sathish, N. Krishnamurthy and T. Pravin, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:—

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No. 2/1999/Lab./L, dated 10-1-2000 for adjudicating the following:—

(a) Whether the non-employment of Tmt. M. Chitra by the management of Pond's (India) Limited, Arumparthalapuram, Pondicherry (Presently Hindustan Lever Limited, Arumparthalapuram Pond's Factory) is justified? If not, to what relief she is entitled to?

(b) To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:—

The petitioner joined in the respondent company as Operator from 12-11-1987. She was given show cause notice, dated 10-6-1996 by the management alleging unauthorised absence from 7-6-1996 onwards. She was also alleged to have abandoned her employment. As the management did not accept her explanation for the charges, a domestic enquiry into charges was conducted and subsequently the management dismissed her from service with effect from the forenoon of 12-11-1997 for which she submitted her explanation, dated 10-10-1997 and 21-10-1997. The enquiry proceedings in respect of the charges levelled against her have not been conducted in accordance with law. The Enquiry Officer denied permission to the petitioner to engage her husband as her defence assistant and to examine him as a witness on her side as requested through her letter dated 7-12-1996. The Enquiry Officer was acting in favour of the management and there were defects in the enquiry procedure.

The respondent framed false charges against the petitioner with a *mala fide* intention of victimizing the petitioner for her being a member of trade union. The petitioner was also suspended pending enquiry into the charges through order dated 18-6-1996 and that the suspension was illegal, since there was no enquiry pending on that date. The petitioner was not granted subsistence allowance at the enhanced rate of 75% of the wages, when the suspension continued after 90 days. Hence, this industrial dispute is filed to reinstate the petitioner with back wages, continuity of service and all other consequential benefits in addition to damages for illegal termination as quantified above.

3. In the counter statement, the respondent has stated as follows:—

The respondent find from her attendance record that she was a habitual absentee and had been warned orally and in writing on many occasions. The petitioner was given a severe warning through respondent's letter, dated 12-3-1996. Even after 29-6-1996, no explanation for charge sheet was forthcoming. Under these circumstances, the management was

placing the petitioner under suspension pending enquiry and conducted the enquiry and the enquiry went on fully complying with the principles of natural justice between 13-7-1996 to 21-7-1997. On the basis of the materials of enquiry the Enquiry Officer gave a detailed finding that all the charges against the petitioner was proved. Then the management issued a second show cause notice dated 4-10-1997 regarding punishment for which the petitioner submitted her explanation, dated 10-10-1997 and 21-10-1997. Not satisfied with the said explanation and taking into consideration of industrial discipline and peace, the respondent dismissed the petitioner from 12-11-1997. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner. PW1 was examined and Ex.P1 to Ex.P11 were marked. On the side of the respondent, RW1 was examined and Ex.R1 to Ex.R8 were marked.

5. The point for determination is:

Whether the petitioner can be considered for reinstatement in service with back wages?

6. On the point:

The contention of the petitioner is that she joined, duty on 12-11-1987 and she was kept under probation till 1-1-1991 and she was made permanent on 1-1-1992. She further contended that she had absented from 7-6-1996 and before the lapse of eight days as meant in the standing order of the company, the management issued a show cause notice on 10-6-1996 and as per the evidence in the inquiry, the petitioner has received the show cause notice on 15-6-1996 or 16-6-1996 and before the expiry of three days time to tender reply, the management suspended the petitioner from 18-6-1996. It is further case of the petitioner that the charge memo, the list of witnesses to be examined and the list of documents relied upon by the management were not furnished and the copies of the documents and the statements of the witnesses were not given to the petitioner and even the inquiry report does not contain the list of documents.

7. To prove her claim, the petitioner has marked the Domestic Enquiry Report, dated 10-6-1996 as Ex.P1, letter from management to Chitra dated 7-10-1997 as Ex.P2, Copy of the letter from Chitra to management, dated 10-10-1997 as Ex.P3, letter from management to Chitra, dated 17-10-1997 as Ex.P4, letter to Labour Officer by the petitioner, dated 12-1-1998 as Ex.P5, Report of Conciliation Officer, dated 17-7-1998 as Ex.P6, letter from the petitioner to Labour Officer, dated 24-8-1998 as Ex.P7, dismissal order, dated 8-1-1997 as Ex.P8, letter from the management to the petitioner, dated 18-6-1996 as Ex.P9, letter from the management to the petitioner, dated 10-6-1996 as Ex.P10 and letter from Enquiry Officer to the petitioner, dated 8-7-1996 as Ex.P11.

8. *Per contra*, the contention of the respondent is that the petitioner joined service under the respondent on 12-11-1987 and from January 1995, she was frequently absenting from work. In spite of repeated warnings, the petitioner continued to remain absent and as the petitioner could not correct herself in spite of repeated opportunities given to her and as the petitioner remained absent from 6-6-1996 onwards, on 8-6-1996, a charge sheet was issued to her on her misconduct of habitual absence. It is further contended by the respondent that as the petitioner continued her absenteeism from 6-6-1996, she was suspended pending enquiry by order 18-6-1996 and a domestic enquiry was held into the charges levelled against the petitioner and the Enquiry Officer submitted his findings holding that the charges levelled against the petitioner was proved and after giving a second show cause notice and after considering the explanation of the petitioner, which was found not satisfactory by order, dated 12-11-1997. the petitioner was dismissed from service. In order to support his claim, the learned counsel for the respondent has relied upon the following decisions:

1998(1) L.L.N. 710:—

Industrial Dispute Act, 1947, S.11A - Object of - Discretion vested under S.11A is not meant to be equated to charity - Petitioner habitually absenting himself from duty in spite of imposition of fines or suspension - Finally dismissed - Labour Court though holding that petitioner has been rightly found guilty of unauthorised and wholly unjustified absence from duty, considering that he has aged parents and has dependant younger brother and that he may be given another opportunity to rectify his mistake directed his reinstatement as a fresh appointee - On a writ petition against the award of Tribunal, High Court, held the discretion under S.11 A of the Industrial Disputes Act is not meant to be equated to charity- That is not the object of S.11A - Order of Labour Court so far as it directs reinstatement of petitioner is set aside - Penalty of dismissal from service is confirmed."

2006 STPL(LE) 36926 SC:—

"Misconduct - Domestic enquiry - Dismissal- Short remittance - Charge was proved, yet the single Judge and Judges of Division Bench proceeded to pass an order directing reinstatement- Impugned order held *ex facie* illegal and contrary to the law laid down and hence set aside - Order of dismissal of respondent from service, restored."

2008-II LLJ645(SC):—

“Removal from service - Employee, habitual absentee -Charges admitted by him - All procedural requirements were complied with - High Court, could not set aside well reasoned order on sympathy and sentiments.”

2004(3) LLJ543:—

“Treating unauthorised absence from duty as leave without pay, not same as sanctioned leave - Absence without obtaining leave in advance, such being requirement under relevant Standing Order held amounted to misconduct and termination therefor justified.”

9. On the side of the respondent, the enquiry proceedings with enquiry report was marked as Ex.R1, warning letter issued to the petitioner, dated 27-4-1995 as Ex.R2, another warning letter issued to the petitioner by the management, dated 22-11-1995 as Ex.R3, warning letter, dated 5-12-1995 issued to the petitioner as Ex.R4, attendance record of the petitioner for the year 1995 as Ex.R5, letter dated 4-10-1997 sent by the management to the petitioner as Ex.R6, explanation letter sent by the petitioner to the management, dated 21-10-1997 as Ex.R7 and standing order of the management as Ex.R8.

10. The main contention of the learned counsel for the petitioner is that the petitioner was working from 12-11-1987 and she was absent from 7-6-1996 and she was immediately suspended from 10-6-1996, even though the Standing Order of the company permit the employee about eight days continuously. The learned counsel for the petitioner further contended that a farce enquiry was initiated against the petitioner, list of witnesses and the documents were not furnished to her and the principles of natural justice was not followed in the said enquiry and the management without following the procedural laws, passed the dismissal order against the petitioner.

11. On perusal of attendance record of the petitioner for the year 1995, it is seen that the petitioner has taken the leave for 30 days, ESI leave for 85 days, absent for 75 days and totally, the petitioner has taken leave for 186 days. For the above misconduct of unauthorised absent, the management has called for explanation through Ex.R2, Ex.R3 and Ex.R4 on various dates. The petitioner in her letter, dated 9-12-1995 informed the management that she was away for taking country treatment and hence she could not inform about her absent. No other letter has been received by the management regarding the above misconduct. In 1996 (From January to June) the petitioner was unauthorised absent for 52 days out of 133 working days and she was directed to furnish

explanation by the management *vide* their letter, dated 2-3-1996, for which the petitioner has given explanation on 9-3-1996 stating that she was unable to intimate the management since she was away from place of residence. Further on perusal of enquiry proceedings Ex.R1, it is seen that the petitioner has been suspended from 18-9-1996 for unauthorised absent as per the Standing Order of the management under clause 22(1) which stipulates absence without leave for more than ten consecutive days is misconduct. Subsequently, the enquiry was ordered on 18-7-1996 and the enquiry was conducted and the petitioner was given opportunity to cross examine the management witnesses. Thiru Balachandar, Presenting Officer was examined and he was cross examined by the petitioner on 12-10-1996, 16-11-1996 and 26-11-1996. One Narayanasamy and Androse were examined as witnesses on the side of the petitioner on 10-7-1997 and 12-7-1997.

12. The available records would clearly prove that the petitioner was given a charge memo for the misconduct of unauthorised absent of the petitioner for 52 days and the domestic enquiry was conducted by the management for which the petitioner was participated in the enquiry proceedings and she was given opportunity to cross examine the management witnesses and further on the side of the petitioner, two witnesses were examined. After examination of both side witnesses, the enquiry was concluded and finally the Enquiry Officer filed his report stating that the charges against the petitioner were proved and again the second show cause notice was served to the petitioner and she was given an opportunity to give explanation for the same. Hence, from the evidence available on records, it is very clear that the domestic enquiry conducted by the management is fair and proper. The principle of fair hearing was properly followed in this case. The Enquiry Officer has also properly assessed the evidence brought before him. Hence, I feel that the manner in which the enquiry conducted by the management was fair and proper in this case.

13. The Labour Court has got ample powers under section 11-A of Industrial Disputes Act to analyse the appreciation of evidence, which was put forth before the Enquiry Officer. In this case, on perusal of records pertaining to the year 1995 and 1996, it is seen that the petitioner has unauthorisedly absent for several days. These factors were scrutinised by the Enquiry Officer. The unauthorised absent itself is a serious misconduct. The respondent's Standing Orders clause 16 was reminded to the petitioner whenever the explanation called for by the management through Ex.R2 to Ex.R4, which cannot be denied by the petitioner.

14. The learned counsel for the petitioner would submit that the Standing Order itself permits the employee for at least eight days absenteeism and if the management permits, the workman can loose the payment for the above absenteeism for eight days. It is also submitted by the learned counsel for the petitioner that only after three days of continuous absent, the petitioner was given charge memo and that too the petitioner was directed to submit her explanation within three days, which is unknown to the labour law. But on perusal of records, it is seen that the petitioner was not only absent for 52 days in the 1996, but in the previous years also the petitioner was unauthorisedly absent for several days. These factors were thoroughly gone into by the Enquiry Officer and the petitioner was given ample opportunity to defend her case in the enquiry proceedings.

15. The learned counsel for the respondent would submit that the delinquent employee was chronic absentee even in the year 1995 and for the same, several memos were issued, calling for her explanation and the explanation submitted by the petitioner was not satisfactorily by the management. Since the delinquent employee was not corrected herself, after a period of long breathing time, the present charge memo was issued to her and the domestic enquiry was conducted in a fair manner and the principles of natural justice were not violated and hence, the enquiry conducted by the Enquiry Officer was in a fair manner and the finding of the Enquiry Officer was not perverse and after following the fixed norms available as per the law, the Enquiry Officer finally concluded the findings and the management passed a dismissal order as per the finding given by the Enquiry Officer is proved.

16. Now we have to find out whether the order of dismissal passed by the management against the petitioner is proportionate one consequent to the misconduct of the charges levelled against her. The petitioner was a chronic absentee and without intimating the management, she was unauthorisedly absent for duty. Because of the attitude of the said employee, the productivity of the respondent will automatically be affected. On this aspect, the management has correctly decided the petitioner's case. But the respondent has not produced any records to show that prior to 1995, the petitioner was indulged in any misconduct. It is an admitted fact that neither warning letters nor charge memo was issued to the petitioner prior to 1995. Admittedly, the petitioner was working under the respondent company from 1987 and the service of the petitioner from 1987 to 1994 was without any bad records. At this juncture, I feel that the basic ideals of the

enactment of the labour legislations should be borne in mind by the Labour Courts. The petitioner, who was working from 1987 to 1994 with unblemished record of service, should have been punished for the above misconduct with lesser punishment. The order of dismissal of the petitioner will affect the service benefits for the service rendered under the respondent for about seven years. On the side of the respondent, it was reported that the respondent company was closed now and hence there is no question of reinstatement of the petitioner in the respondent company. Hence, I hold that some monetary benefit only will meet the ends of justice towards compensation to the petitioner. Accordingly, this point is answered.

17. In the result, the industrial dispute is partly allowed and the respondent is hereby directed to pay a sum of ₹ 25,000 to the petitioner towards monetary compensation. However, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 22nd day of October 2010.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner:

PW1 — 15-7-2010 Chitra

List of witnesses examined for the respondent:

RW1 — 23-9-2010 C.S. Youvarajan

List of exhibits marked for the petitioner:

Ex.P1 — Domestic Enquiry Report, dated 10-6-1996

Ex.P2 — Letter from management to Chitra, dated 7-10-1997.

Ex.P3 — Copy of the letter from Chitra to management, dated 10-10-1997.

Ex.P4 — Letter from management to Chitra, dated 17-10-1997.

Ex.P5 — Letter to Labour Officer by the petitioner dated 12-1-1998.

Ex.P6 — Report of Conciliation Officer, dated 17-7-1998.

Ex.P7 — Letter from the petitioner to Labour Officer, dated 24-8-1998.

Ex.P8 — Dismissal order, dated 8-1-1997.

Ex.P9 — Letter from the management to the petitioner, dated 18-6-1996.

Ex.P10—Letter from the management to the petitioner, dated 10-6-1996.

Ex.P11—Letter from Enquiry Officer to the petitioner, dated 8-7-1996.

List of exhibits marked for the respondent:

Ex.R1—Enquiry proceedings with enquiry report

Ex.R2—Warning letter issued to the petitioner, dated 27-4-1995.

Ex.R3—Another warning letter issued to the petitioner by the management, dated 22-11-1995.

Ex.R4—Warning letter, dated 5-12-1995 issued to the petitioner.

Ex.R5—Attendance record of the petitioner for the year 1995.

Ex.R6—Letter dated 4-10-1997 sent by the management to the petitioner.

Ex.R7—Explanation letter sent by the petitioner to the management, dated 21-10-1997.

Ex.R8—Standing order of the management.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 233/AIL/Lab./J/2010, dated 21st December 2010)

NOTIFICATION

Whereas, the Award in I.D.No.32/2008, dated 30-09-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Pondicherry Institute of Medical Sciences, Periyakalapet and Tmt. J. Kasthuri over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. MOHANDASS, M.A., B.L., P.G.D.H.R.D.I., II Additional District Judge, Presiding Officer, Labour Court.

Thursday, the 30th day of September 2010

I.D. No. 32/2008

J. Kasthuri,
Thiruvalluvar Theru, Viswanathan Nagar,
Muthialpet, Pondicherry. . . Petitioner.

Vs.

The Managing Director,
Pondicherry Institute of Medical Sciences,
Pondicherry. . . Respondent.

This industrial dispute coming on this day for hearing before me in the presence of Thiru P. Rabindran, Advocate for the petitioner, Thiruvalargal L. Sathish, N. Krishnamurthy and T. Pravin, Advocates for the respondent, upon perusing the case records, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.145/AIL/Lab./J/2008, dated 18-9-2008 for adjudicating the following:—

(a) Whether the dispute raised by Tmt. J. Kasthuri, against the management of M/s. Pondicherry Institute of Medical Sciences, Periyakalapet, Puduchery over her non-employment is justified or not?

(b) To what relief, Tmt. J. Kasthuri is entitled to?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. On the side of the petitioner, the claim statement was filed and then the matter was posted for filing of counter by the respondent. The respondent filed his counter. When the case was posted for enquiry, the learned counsel for the respondent was present and the petitioner was called absent. Hence, the industrial dispute is dismissed for default. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 30th day of September 2010.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 240/AIL/Lab./J/2010, dated 30th December 2010)

NOTIFICATION

Whereas, the Award in I.D.No.15/2004, dated 21-9-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Karur K.C.P Packagings Limited, Thiruvandarkoil and Thiru P. Ganesan over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. MOHANDASS, M.A., B.L., P.G.D.H.R.D.I.,
II Additional District Judge,
Presiding Officer, Labour Court.

Tuesday, the 21st day of September 2010

I.D. No. 15/2004

P. Ganesan,
No. 353, Main Road,
Nallathur Post,
Cuddalore District. . . Petitioner

Versus

K.C.P. Packagings Limited,
Pondy Paper Division,
Represented by its General Manager,
Thiruvandarkoil. . . Respondent

This industrial dispute coming on 6-9-2010 for final hearing before me in the presence of Thiru K. Venkitesan and Thiru P. Sankaran, Advocates for the petitioner, Thiruvalargal I. Anayappan and R. Balasubramanian, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.42/2004/Lab./AIL/J/2008, dated 11-3-2004 for adjudicating the following :—

(a) Whether the non-employment of Thiru P. Ganesan, by the management of M/s. Karur K.C.P. Packagings Limited, Pondicherry is justified or not?

(b) To what relief, he is entitled to?

(c) To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was a permanent employee in the respondent company for the past six years and he was very obedient to his superiors. On 13-11-2001 he received a memo. of charges stating that he damaged the side mirror of the company car, while he was driving the car. The petitioner admitted his guilt and submitted a condonation letter to the respondent. Then the respondent suspended the petitioner from his service from 15-11-2001 to 21-11-2001 and after that he joined service in the respondent company.

Before joining service, the respondent demanded the workmen to submit undated resignation letter. Due to compulsion, the petitioner submitted the resignation letter to the respondent. By using the said letter, the respondent now relieved the petitioner from service on 28-3-2003.

Then the respondent did not allow the petitioner to the company from 21-2-2003. Hence, the petitioner sent a requisition letter to respondent company to reinstate him into the service. But the respondent company sent a letter to the petitioner stating that as if the petitioner resigned the job and his resignation letter, dated 13-11-2002 was accepted by them. The respondent also published the said letter in Dinamalar Tamil newspaper. As the termination of service of the petitioner is illegal and it amounts to victimisation, the petitioner is filed this industrial dispute to reinstate him in service with full back wages and continuity of service.

3. In the counter statement, the respondent has stated as follows :

It is true that the petitioner was working as a Driver under the respondent. But it is false to state that he was dismissed from service by the respondent management. The petitioner due to

family circumstances, he himself has expressed that he is unable to continue his job and thereby he has resigned his employment and submitted his resignation letter, dated 13-2-2003. The resignation of the petitioner was accepted and the same was informed to the petitioner through letter, dated 13-2-2003 and the petitioner after receiving the order with *mala fide* intention stated that he has not received any order, but the cover contains only white papers. However, the fact of resignation was published in Tamil daily namely Dinamalar on 19-2-2003. On 24-2-2003 the petitioner sent another letter stating that he has not given any resignation letter and if any resignation letter is submitted, the same is withdrawn by him. Since the offer of resignation has already been accepted and relieved, the question of withdrawing the resignation letter does not arise at all. Further the resignation letter, dated 13-2-2003 was written by him on his own handwriting. Hence, the question of reinstatement does not arise at all and it is a case of the resignation and the same cannot be construed as dismissal or termination. Hence, he prays for dismissal of the industrial dispute.

4. On the side of the petitioner, he examined himself as PW.1 and Ex.P1 to Ex.P10 were marked. On the side of the respondent, no oral evidence was adduced and Ex.R1 to Ex.R14 were marked.

5. The point for determination is:

Whether the petitioner can be considered for reinstatement in service with back wages?

6. On the point:

The petitioner has stated that he was working under the respondent management for the past six years and on 13-11-2001 he received a memo. of charges stating that he had damaged the side mirror of the company car and he admitted his guilt and submitted his condonation letter and then he was suspended from service from 15-11-2001 to 21-11-2001. It is further contended by the petitioner that the respondent demanded him to submit an undated resignation letter and due to compulsion and to retain his job, he submitted the resignation letter and by using the said resignation letter, the respondent management relieved from service on 28-3-2003 and when he sent a requisition letter to the respondent to reinstate him into service, the respondent refused to give the job to him. In order to prove his contention, the petitioner has marked Ex.P1 memo. issued by the respondent to him for the damage caused to car of respondent company, Ex.P2 suspension order issued by

the respondent for causing damage to their car, Ex.P3 letter, dated 13-2-2003 issued by the respondent accepting the resignation letter of the petitioner, Ex.P4 Copy of the returned postal cover, Ex.P5 copy of the letter, dated 14-2-2003 sent by the petitioner to the respondent, Ex.P6 copy of the letter sent by the petitioner to the respondent requesting to give the employment, Ex.P7 copy of the letter, dated 28-2-2003 sent by the respondent to the petitioner refusing to give the employment, Ex.P8 copy of the letter, dated 3-3-2003 sent by the petitioner to the respondent requesting to give the employment, Ex.P9 copy of the failure report sent by the Conciliation Officer and Ex.P10 copy of the notification.

7. *Per contra*, the contention of the respondent is that the petitioner due to his family circumstances, he himself voluntarily submitted his resignation letter, dated 13-2-2003 and the same was accepted and the resignation was published in Tamil daily namely Dinamalar on 19-2-2003. It was further contended that on 24-2-2003 the petitioner sent a letter stating that he has not given any resignation letter and if any resignation letter is submitted by him, the same is withdrawn by him and since the offer of resignation has already been accepted and relieved, the question of withdrawing the resignation letter does not arise at all. In order to prove his contention, the respondent has marked Ex.R1condonation letter, dated 13-1-2000 given by the petitioner to the respondent, Ex.R2 memo. issued to the petitioner for causing damage to car of the respondent, Ex.R3 letter, dated 15-11-2001 given by the petitioner to the respondent admitting the said damage, Ex.R4. suspension letter, dated 15-11-2001 issued to the petitioner, Ex.R5 letter, dated 18-1-2002 sent by the petitioner to the respondent admitting the misuse of 34 litres of diesel, Ex.R6. copy of the letter deducting a sum of ₹ 590 from the salary of the petitioner for misuse of the diesel, Ex.R7 is a letter sent by the petitioner to the respondent, Ex.R8 resignation letter sent by the petitioner to the respondent, Ex.R9 acknowledgment card, Ex.R10 letter, dated 14-2-2003 sent by the petitioner to the respondent, Ex.R11 paper publication, Ex.R12 letter sent by the petitioner to the respondent requesting for employment, Ex.R13 letter accepting the resignation letter of the petitioner and Ex.R14 copy of letter sent by the petitioner to the respondent requesting for his employment.

8. There is no dispute that the petitioner was working as a Driver in the respondent company. The main contention of the petitioner is that he was forced to submit the resignation letter by the

respondent and by using the said letter, he was relieved from his service by the respondent on 28-3-2003 and subsequently he was refused the employment. The resignation letter has been marked on the side of the respondent as Ex.R8. A perusal of Ex.R8 would reveal that due to the family situation, he resigned his job. But it is to be noted that the date of the said letter is written in a different ink.

9. The contention of the petitioner is that due to the damage caused to the belonging to the respondent company, he was suspended from his service from 15-11-2001 to 21-11-2001 and when he admitted his guilty, the respondent demanded him to submit an undated resignation letter and due to compulsion by the respondent, he submitted the resignation letter to them and by using the said letter, the respondent relieved the petitioner from his service on 28-3-2003. The contention of the petitioner cannot be rejected, since the date of Ex.R8 resignation letter is written in a different ink, which would clearly prove that on undue influence and on coercion only, the respondent could have obtained the resignation from the petitioner, which is unknown to labour legislations.

10. On the side of the respondent, it is contended that in the past, the petitioner has committed various misconducts at various occasions for which warning, suspension, reduction in wages have been awarded as punishment on several occasions. In order to prove the above contention, several documents were marked. Ex.R1 is the condonation letter, dated 13-1-2000 given by the petitioner to the respondent, Ex.R2 is the memo, issued to the petitioner for causing damage to car of the respondent, Ex.R3 is the letter, dated 15-11-2001 given by the petitioner to the respondent admitting the said damage, Ex.R5 is the letter, dated 18-1-2002 sent by the petitioner to the respondent admitting the misuse of 34 litres of diesel, Ex.R6 is the copy of the letter deducting a sum of ₹ 590 from the salary of the petitioner for misuse of the diesel.

11. It is the duty of the management to conduct the domestic enquiry before terminating the service of the petitioner. In this case, no enquiry was conducted before punishing the petitioner for the alleged irregularities committed by him. According to the respondent management, the petitioner has voluntarily resigned from the job by offering the resignation letter. But the petitioner was not given the opportunity to prove his case that under what circumstances, the resignation letter was obtained from him. The principles laid down in the following cases are very relevant to this point:—

2001(4) LLN1006 AP :

Vice - Chancellor Sri Padmavathi, Mahila Viswavidyalayam Tirupathi and Others Vs. Professor V.N. Dass:

“It is well settled principle of law that a resignation obtained by force would amount to termination of service. Such termination of service on the charges of irregularity could not have been effected without giving an opportunity of hearing”.

1984 (1) LLN 203 (Bombay) :

Shriram Swami Shikshan Sanstha, Nagpur Vs. Education Officer, Zilla Parishad, Nagpur and another.

We feel that it is a well settled proposition of law that a forced resignation, which means a resignation not voluntarily given by the employee but is brought about by force, duress or in any other manner by the employer is by the act of the employer. In substance the contract of service comes to an end in such case by the action on the part of the employer. It therefore, amounts to termination of the service by the employer.

This aspect of the matter has been considered recently again by a Division Bench of the Bombay High Court in R.D. Surve Vs. Tata Iron and Steel Company Limited, reported in 1988 (2) LLN. 861. In that case, the Bombay High Court had held that the word 'discharge or dismissal, will include in it forced resignation."

12. In this case, the petitioner was not given an opportunity of hearing and also he was not given an opportunity to submit his explanation regarding the resignation letter and hence, the above alleged resignation is termination of service of the petitioner. Eventhough I consider that the above resignation letter has been obtained forcibly, the reinstatement is not possible, since the petitioner has already attained the age of superannuation. Hence, considering the facts and circumstances of the case, the respondent is hereby directed to pay a monetary compensation to the petitioner for the illegal termination of service. Accordingly, this point is answered.

13. Accordingly, the respondent is hereby directed to pay a sum of ₹ 30,000 as compensation to the petitioner within two months. However in the circumstances of the case, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 21st day of September 2010.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner:

PW.1 — 23-8-2007 Ganesan

*List of witnesses examined for the respondent: Nil.**List of exhibits marked for the petitioner:*

Ex.P1 — Memo. issued by the respondent to the petitioner.

Ex.P2 — Suspension order issued by the respondent to the petitioner.

Ex.P3 — Letter, dated 13-2-2003 issued by the respondent.

Ex.P4 — Copy of the returned postal cover.

Ex.P5 — Copy of the letter, dated 14-2-2003 sent by the petitioner to the respondent.

Ex.P6 — Copy of the letter sent by the petitioner to the respondent.

Ex.P7 — Copy of the letter, dated 28-2-2003 sent by the respondent to the petitioner.

Ex.P8 — Copy of the letter, dated 3-3-2003 sent by the petitioner to the respondent.

Ex.P9 — Copy of the failure report sent by the Conciliation Officer.

Ex.P10 — Copy of the notification.

List of exhibits marked for the respondent:

Ex.R1 — Condonation letter, dated 13-1-2000 given by the petitioner to the respondent.

Ex.R2 — Memo. issued to the petitioner.

Ex.R3 — Letter, dated 15-11-2001 given by the petitioner to the respondent.

Ex.R4 — Suspension letter, dated 15-11-2001 issued to the petitioner.

Ex.R5 — Letter, dated 18-1-2002 sent by the petitioner to the respondent.

Ex.R6 — Copy of the letter sent by the respondent.

Ex.R7 — Letter sent by the petitioner to the respondent.

Ex.R8 — Resignation letter sent by the petitioner to the respondent.

Ex.R9 — Acknowledgment card.

Ex.R10 — Letter, dated 14-2-2003 sent by the petitioner to the respondent.

Ex.R11 — Paper publication

Ex.R12 — Letter sent by the petitioner to the respondent.

Ex.R13 — Letter accepting the resignation letter of the petitioner.

Ex.R14 — Copy of letter sent by the petitioner to the respondent.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 241/AIL/Lab./J/2010, dated 30th December 2010)

NOTIFICATION

Whereas, the Award in I.D. No. 17/2009, dated 21-9-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Essae Electronics Private Limited, Mettupalayam and Thiru P. Asokan over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette. Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. MOHANDASS, M.A., B.L., P.G.D.H.R.D.I., Presiding Officer, II Additional District Judge, Pondicherry.

Dated the 21st day of September 2010

I.D. No. 17/2009

The President,
Essae Electronics Thozhilalar Sangam,
No. 56, Anna Street,
Shanmugapuram, Puducherry-9 . . Petitioner

Versus

The Managing Director,
M/s. Essae Electronics Private Limited,
C. 75, 76, 15th Cross,
PIPDIC Industrial Estate,
Mettupalayam, Puducherry-9 . . . Respondent

This petition coming on this day for hearing before me in the presence of Thiru K. Parthiban, counsel for respondent and petitioner called absent and upon perusing the case records, this court made the following:—

ORDER

This industrial dispute arises out of the reference made by the Government under section 10(1) (e) of the Industrial Disputes Act in G.O. Rt. No. 115/Lab./2009/AIL/J, dated 6-8-2003. The Government made the following reference:—

1. Whether the termination of Thiru P. Asokan from the service of M/s. Essae Electronics Private Limited, Mettupalayam, Puducherry, is justified or not?

2. To what relief, the workman is entitled to?

3. To compute the relief, if any awarded in terms of money, if it can be computed?

Today petition was called. Petitioner called absent. Respondent representative present. Petition is dismissed for default. No cost.

Written and pronounced by me in the open court on the 21st day of September 2010.

T. MOHANDASS,
Presiding Officer,
II Additional District Judge,
Pondicherry.

GOVERNMENT OF PUDUCHERRY**CHIEF SECRETARIAT (ENVIRONMENT)**

(G.O. Ms. No. 24/Envt./2010, dated 16th December 2010)

ORDER

In the Memorandum No. 3-11/Envt./2010, dated 29-11-2010 of the Chief Secretariat (Environment), Puducherry and Memorandum No.7/DSTE/Estt./A1/97/353, dated 9-2-1998 of the Department of Science, Technology and Environment, Puducherry, the tentative seniority list of Junior Engineer (Environment), Group 'B' Non-Gazetted who has been appointed in the Department of Science, Technology and Environment, Puducherry has been circulated inviting objections, if any, to the seniority proposed to be assigned.

2. As no objection has been received against the tentative seniority list, the final seniority of Junior Engineer (Environment), Group 'B' Non-Gazetted will be as indicated below :

Sl. No.	Seniority No.	Name of the Junior Engineer	Department/Office in which working	Date of appointment as Junior Engineer
(1)	(2)	(3)	(4)	(5)
Thiruvalargal :				
1	3	N. Ramesh	Department of Science, Technology and Environment.	3-8-1998
2	4	K. Kalamegam	Department of Science, Technology and Environment.	12-12-2003
3	5	Vemu Karuna Sekhar Babu	Resigned with effect from 31-5-2008	15-12-2003

(By order)

N. SUMATHI,
Deputy Secretary to Government (Envt.).